

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board**

CHOCTAW NATION OF OKLAHOMA

Opposer/Petitioner,

vs.

MISSISSIPPI BAND OF CHOCTAW INDIANS

Applicant/Registrant.

Consolidated Proceedings

Opposition Nos. 125,682;
125,905; 125,906; 152,088;
152,089; 153,592; 153,940;
154,289

Cancellation Nos. 40,730 and 40,866

BOX TTAB
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Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

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**MOTION TO EXTEND DISCOVERY PERIOD
AND TO RESPOND TO PETITIONER'S WRITTEN DISCOVERY**

Applicant/Registrant, Mississippi Band of Choctaw Indians, through counsel, hereby moves the Board to extend the period set for discovery in its Order of May 22, 2003 ("Scheduling Order"), and for additional time to respond to Opposer/Petitioner's written discovery in this consolidated proceeding, pursuant to 37 U.S.C. § 2.120(a). The Board's Scheduling Order allows the usual 180 days for discovery, whereby it is set to close December 7, 2003. Opposer/Petitioner hand-served Interrogatories, Document Requests, and Requests for Admissions upon Applicant/Registrant on May 23, 2003, responses to which would otherwise be due on June 23. Applicant/Registrant for support of its Motion states as follows.

The opposition and cancellation proceedings filed by Opposer/Petitioner address every application and/or registration pursued by Applicant/Registrant on the Federal Registry which contains the words CHOCTAW or CHATA, ten in all. In asserting rights in these proceedings, Opposer/Petitioner relies upon claims of superior trademark rights owned by it in some twenty marks containing the word CHOCTAW. Accordingly, the scope of these consolidated proceedings far exceed

the usual, as is demonstrated by the wide-ranging written discovery served upon Applicant/Registrant by Opposer/Petitioner, a copy of which is attached hereto for reference.


For the same reason, Applicant/Registrant cannot prepare and serve meaningful responses to such broad-ranging discovery within a mere thirty days. Furthermore, Applicant/Registrant will require time to prepare and serve its own written discovery. The rights at issue are ones taken seriously by both parties, and the parties should be afforded sufficient time to address the issues in good faith. Neither party will be prejudiced by granting this Motion, as each is continuing its use of its respective marks during the pendency of this proceeding.

According, Applicant/Registrant respectfully requests that the discovery period be extended to June 7, 2004, and the remaining dates in the Scheduling Order reset accordingly. In view of the imminent period of summer vacations, Applicant/Registrant proposes to serve its responses to Opposer/Petitioner's written discovery on or before September 23, 2003, and further respectfully requests that the Board so order its time to respond..

Applicant/Registrant respectfully submits that it has shown sufficient good cause to support its Motion and requests that it be granted accordingly.

Respectfully submitted,

MISSISSIPPI BAND OF CHOCTAW INDIANS

By: 

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Attorneys for Applicant

Dated: June 20, 2003

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+ Virginia also
• Maryland only
• D.C. only
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■ Federal practice only

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May 23, 2003

HAND-DELIVERY

WITHOUT PREJUDICE

Barbara L. (Pixie) Waite, Esquire
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1201 New York Avenue, NW
Suite 1000
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Re: Choctaw Nation of Oklahoma v. Mississippi Band of Choctaw Indians
Our File No. 102593.00056

Dear Pixie:

Please find enclosed the first set of Discovery requests for the above-referenced matter.

Sincerely,

SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: _____

Eric J. von Vorys

EJV:im

cc: Mr. Stephen L. White
Glenn C. Etelson, Esquire
Stephen G. Janoski, Esquire

T: 063003

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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	:	
CHOCTAW NATION OF OKLAHOMA,	:	
	:	
Opposer/Petitioner,	:	Consolidated
	:	Opposition No. 125682
	:	(Parent Case)
v.	:	Opposition No. 125905
	:	Opposition No. 125906
MISSISSIPPI BAND OF CHOCTAW INDIANS,	:	Opposition No. 152088
	:	Opposition No. 152089
Applicant/Respondent.	:	Opposition No. 153592
	:	Opposition No. 153940
	:	Opposition No. 154289
	:	Cancellation No. 040730
	:	Cancellation No. 040866
	X	

**OPPOSER/PETITIONER'S FIRST SET OF
INTERROGATORIES TO APPLICANT/RESPONDENT**

CHOCTAW NATION OF OKLAHOMA (hereinafter "OPPOSER/PETITIONER"), in accordance with Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, propounds the following written interrogatories to be answered by MISSISSIPPI BAND OF CHOCTAW INDIANS (hereinafter "APPLICANT/RESPONDENT") in writing under oath.

INTRODUCTION. DEFINITIONS AND INSTRUCTIONS

A. These interrogatories seek answers within thirty (30) days after service hereof upon APPLICANT/RESPONDENT's counsel of record in this case, and, as to any interrogatories addressed to matters falling within Rule 26(e)(1) and 26(e)(2) Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring APPLICANT/RESPONDENT to

serve upon OPPOSER/PETITIONER's counsel such further supplemental or amended answers seasonably after APPLICANT/RESPONDENT has acquired additional knowledge or information relating in any way to such interrogatories.

B. As used herein, the term "document" shall be construed in its customary broadest permissible sense which can be ascribed to it pursuant to Rule 34, Federal Rules of Civil Procedure, and shall include, but not be limited to, any and all means of conveying, storing, memorializing information or data, whether in paper, electronic or other tangible physical form in the possession, custody or control of APPLICANT/RESPONDENT.

C. As used herein, the term "person" shall include, but is not limited to, any natural person; Indian tribe, whether or not recognized by the United States Government; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization or association; charitable, educational, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

D. As used herein, the term "identify" when used with reference to a natural person, means to state the person's full name, and present or last-known address and telephone number, his/her present and prior employment positions and affiliations, and the dates of each. "Identify" when used with reference to any other type of person means to state that person's full name, present or last known address and relationship to APPLICANT/RESPONDENT, if any.

E. As used herein, the term "identify" when used with reference to a document, means to state the date and author or creator (and, if different, the signer or signers), the addressee, type of document (e.g., letter, memorandum, telegram, chart, magnetic tape, computer printout, tangible physical item, etc.), its present or last known location and custodian, its general

subject matters) content, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production pursuant to Rule 34, Federal Rules of Civil Procedure, or a subpoena *duces tecum*. In the alternative, APPLICANT/RESPONDENT may produce the documents(s) for inspection and copying at a time and place mutually convenient to the parties.

F. As used herein, the term "state" or the terms "state all facts" means to state all facts discoverable under Rule 26(b), Federal Rules of Civil Procedure, that are known to APPLICANT/RESPONDENT. When used in reference to a contention, "state," "state all facts," "state the basis," "identify," "identify all documents," and "identify all communications," shall include all facts, documents, and communications negating as well as supporting, the contention. When used in reference to a contention, "identify each person" shall include persons having knowledge of facts negating, as well as supporting, the contention.

G. If APPLICANT/RESPONDENT refuses to identify and/or produce a document(s) based upon a claim of privilege or work product immunity, it shall, in log form, (i) identify the document as set forth in paragraph E above, and (ii) set forth the particular basis for the refusal of production.

H. "APPLICANT/RESPONDENT" shall include its predecessor(s), if any, its directors, officers, agents, employees, subsidiaries, affiliates, divisions, tribal entities or enterprises, or any other related company.

I. "OPPOSER/PETITIONER" shall include its predecessor(s), if any, its directors, officers, agents, employees, subsidiaries, affiliates, divisions, tribal entities or enterprises, or any other related company.

J. As used herein, “APPLICANT/RESPONDENT’s Trademark/Service Mark” refers to CHOCTAW TIMES, the subject of U.S. Trademark Registration No. 2,459,782; CHOCTAW MANUFACTURING ENTERPRISE, the subject of U.S. Service Mark Registration No. 2,529,707; CHI – CHOCTAW HOSPITALITY INSTITUTE, the subject of U.S. Service Mark Application No. 76/365332; CGI – CHOCTAW GEO IMAGING, the subject of U.S. Combined Trademark and Service Mark Application No. 76/365333; CHOCTAW RESORT DEVELOPMENT ENTERPRISE and Design, the subject of U.S. Service Mark Application No. 76/365334; CHOCTAW TOWN CENTER, the subject of U.S. Service Mark Application No. 76/334068; CHAHTA ENTERPRISE, the subject of U.S. Service Mark Application No. 76/334066; CHOCTAW GEO IMAGING ENTERPRISE, the subject of U.S. Combined Trademark and Service Mark Application No. 76/346302; CHOCTAW RESORT DEVELOPMENT ENTERPRISE, the subject of U.S. Service Mark Application No. 76/334069; and CHOCTAW HOSPITALITY INSTITUTE, the subject of U.S. Service Mark Application No. 76/346301.

K. As used herein, “OPPOSER/PETITIONER’s Trademark/Service Mark” refers to CHOCTAW MANAGEMENT SERVICES ENTERPRISE, the subject of U.S. Service Mark Application No. 78/137856; CHOCTAW CRAFTS AND BOOKS, the subject of U.S. Service Mark Application No. 78/138266; CHOCTAW INDIAN GAMING CENTER, the subject of U.S. Service Mark Application No. 78/138157; CHOCTAW INN, the subject of U.S. Service Mark Application No. 78/138190; CHOCTAW TRAVEL PLAZA, the subject of U.S. Service Mark Application No. 78/138142; CHOCTAW BINGO, the subject of U.S. Service Mark Application No. 78/138201; CHOCTAW MANUFACTURING AND DEVELOPMENT CORPORATION, the subject of U.S. Service Mark Application No. 78/137863; THE GREAT

SEAL OF THE CHOCTAW NATION and Design, the subject of U.S. Trademark Application No. 78/139345; and CHOCTAW NATION HOSPITALITY HOUSE, the subject of U.S. Service Mark Application No. 78/139268, among others.

L. As used herein, words of gender shall be construed as including all genders, without limitation.

M. "And" and "or" shall mean "and/or" and words in the singular shall be construed to mean to the plural, and vice versa.

N. The term "date" shall mean the exact day, month and year, if ascertainable; if not, ascertainable, the closest approximation that can be made by means of relationship to other events, locations or matters.

O. The term "communicate" or "communication" shall mean every manner or means of disclosure, transmittal, transfer and exchange of information, whether oral or written.

INTERROGATORIES

INTERROGATORY NO. 1

Identify all present and former officers, tribal council members, directors, employees and agents of APPLICANT/RESPONDENT who are most knowledgeable concerning each of the following with respect to the United States:

- (a) selection and adoption of APPLICANT/RESPONDENT's Trademark/Service Mark;
- (b) the manufacture of any and all products or goods and/or packaging therefor identified by APPLICANT/RESPONDENT's Trademark/Service Mark;

(c) the rendering of any and all services identified by
APPLICANT/RESPONDENT's Trademark/Service Mark;

(d) the advertising of any and all products or goods and/or services identified by
APPLICANT/RESPONDENT's Trademark/Service Mark; and

(d) the sales of any and all products or goods and services identified by
APPLICANT/RESPONDENT's Trademark/Service Mark.

INTERROGATORY NO. 2

Identify, since the earliest date of first use in the United States or in commerce regulated by the United States of APPLICANT/RESPONDENT's Trademark/Service Mark, the ten largest customers or purchasers of products and/or services identified by
APPLICANT/RESPONDENT's Trademark/Service Mark.

INTERROGATORY NO. 3

Identify all facts and all documents which APPLICANT/RESPONDENT will rely to establish that the terms CHOCTAW and CHAHTA, (the Choctaw language equivalent of CHOCTAW), are not common, descriptive identifiers of specific Native American Indian Tribes and/or members thereof.

INTERROGATORY NO. 4

Identify all facts and all documents which APPLICANT/RESPONDENT will rely to establish that the terms CHOCTAW and CHAHTA, (the Choctaw language equivalent of CHOCTAW), require no, or should not be subject to, disclaimer of exclusive rights entries in the United States Patent and Trademark Office records corresponding and attributable to any
APPLICANT/RESPONDENT's Trademark/Service Mark.

INTERROGATORY NO. 5

Identify all facts and documents which APPLICANT/RESPONDENT will rely to establish that the goods and/or services identified by APPLICANT/RESPONDENT's Trademark/Service Mark do not originate from the geographic location, area, place or territory known as Choctaw, Mississippi, and particularly that the appellation of origin of any and all goods and/or services is outside the geographic location, area, place or territory known as Choctaw, Mississippi.

INTERROGATORY NO. 6

Identify all facts and documents which APPLICANT/RESPONDENT will rely to establish that terms CHOCTAW and CHAHTA, (the Choctaw language equivalent of CHOCTAW), appearing in APPLICANT/RESPONDENT's Trademark/Service Mark do not refer to specific federally recognized Native American Indian Tribes and/or members thereof, and including OPPOSER/PETITIONER.

INTERROGATORY NO. 7

Identify any instances of confusion between APPLICANT/RESPONDENT's products and/or services identified by APPLICANT/RESPONDENT's Trademark/Service Mark and products and/or services of any other person. Without limiting the foregoing, and solely for illustrative purposes, such instances would include misdirected inquiries, misassumptions as to source or origin and complaints or comments as to association or confusion or from which association or confusion may be inferred.

INTERROGATORY NO. 8

Describe the manner in which products and services identified by APPLICANT/RESPONDENT's Trademark/Service Mark are advertised to customers and

prospective customers and identify, since the earliest date of first use in the United States or in commerce regulated by the United States of APPLICANT/RESPONDENT's Trademark/Service Mark, all advertisements and promotional materials used or distributed by APPLICANT/RESPONDENT in the sale and/or marketing of such products and in the rendering and/or marketing of such services.

INTERROGATORY NO. 9

Identify, since the earliest date of first use in the United States or in commerce regulated by the United States of APPLICANT/RESPONDENT's Trademark/Service Mark, all geographic areas in which products and services identified by APPLICANT/RESPONDENT's Trademark/Service Mark have been sold and/or rendered.

INTERROGATORY NO. 10

Describe in detail the manner in which any and all of APPLICANT/RESPONDENT's goods and services identified by APPLICANT/RESPONDENT's Trademark/Service Mark are purchased and rendered outside of the geographic location, area, place or territory known as Choctaw, Mississippi. Without limiting the foregoing, and solely for illustrative purposes, such detailed manner would include describing each step in the production and distribution chains of purchased goods and each step from customer purchase order to actual provision or rendering of services identified APPLICANT/RESPONDENT's Trademark/Service Mark.

INTERROGATORY NO. 11

State the earliest date which APPLICANT/RESPONDENT relies upon as the date of first use of APPLICANT/RESPONDENT's Trademark/Service Mark in the United States or in commerce regulated by the United States and explain the basis upon which that date was determined.

INTERROGATORY NO. 12

State the date and the circumstances under which APPLICANT/RESPONDENT first became aware of OPPOSER/PETITIONER's Trademark/Service Mark.

INTERROGATORY NO. 13

Identify, since the earliest date of first use in the United States or in commerce regulated by the United States of APPLICANT/RESPONDENT's Trademark/Service Mark, each address at or from which APPLICANT/RESPONDENT has conducted business relating to products and services identified by APPLICANT/RESPONDENT's Trademark/Service Mark, and state the nature of the facility at such address (e.g., retail store, office, warehouse).

INTERROGATORY NO. 14

For each instance in which APPLICANT/RESPONDENT denies any request for admission in the requests identified as OPPOSER/PETITIONER'S FIRST REQUEST FOR ADMISSIONS served concurrently herewith, state each reason for such denial and set forth all facts supporting such denial.

INTERROGATORY NO. 15

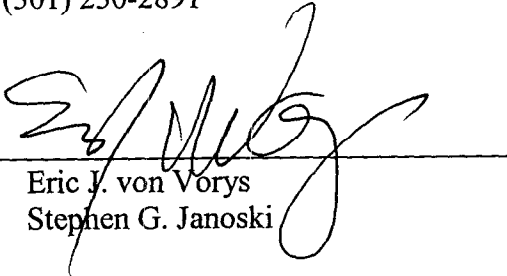
Identify each person who supplied information used in answering the foregoing interrogatories.

Respectfully submitted,

Shulman, Rogers, Gandal, Pordy, & Ecker, P.A.
Attorneys for Opposer/Petitioner

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By: _____


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